



mwe.com

Lindsay F. Ditlow
Attorney at Law
lditlow@mwe.com
+1 212 547 5425

January 18, 2024

VIA ECF

Magistrate Judge Lehrburger
The Honorable Robert W. Lehrburger
United States District Court Southern District of New York
500 Pearl Street, Courtroom 18D
New York, NY 10007

Re: *Hafizov v. BDO USA, LLP, et al.*; Case No.: 1:22-cv-08853 (JPC) (RWL)

Dear Magistrate Judge Lehrburger:

Defendants BDO USA, P.C. (“BDO”), Janet Bernier, and Matthew Dymont (together, the “Defendants”) respectfully submit this pre-motion letter to request that the Court issue an Order permitting Defendants to depose Plaintiff Rinat Hafizov (“Plaintiff” or “Hafizov”) within the United States District Court, Southern District of New York Courthouse located at 500 Pearl Street, New York, NY 10007 (the “Courthouse”).

As will be further discussed herein, Defendants have serious safety concerns that necessitate the deposition taking place within the Courthouse. Defendants have previously reached out to Plaintiff’s counsel regarding these concerns, but Plaintiff’s counsel declined to respond outright. Through communications with the Southern District of New York’s Director of Judicial Services, Defendants were informed that depositions could only be scheduled at the Courthouse upon an order from the Court. *See* Ex. A, Defendants’ Counsel’s Communications with Rigoberto Landers.¹

Accordingly, Defendants respectfully request that the Court issue an Order permitting Defendants to depose Plaintiff at the Courthouse. In addition, Defendants respectfully request that Plaintiff be barred from in-person attendance at the other party and nonparty depositions in this matter.

I. BDO’s Safety Concerns Regarding Plaintiff

During the course of discovery, BDO has uncovered numerous communications from Plaintiff that can only be described as violent, problematic, and highly worrisome, at best. Nearly 3000 pages of text messages provide examples of the Plaintiff’s own disturbing words and pictures published in texts to his BDO colleagues as well as another third-party tax attorney over the course of two years. For instance,

¹ Defendants had attempted to arrange supplemental personal security protocols at Defendants’ counsel’s office in order to safely conduct Plaintiff’s deposition there. However, the building’s management would not permit such measures, requiring that Defendants explore alternative actions.

Magistrate Judge Lehrburger
January 18, 2024
Page 2

Plaintiff:

- Sent numerous photos of himself holding a revolver and, with respect to one photo in which he was pointing a gun at the camera, asked whether he should select that photo as his BDO profile picture. *See* Ex. B, PL000260; PL000266.
- Stated: “I like shooting . . . People.” PL001389.
- Asked his colleague whether her mother could take them to shoot guns or, at least, take pictures with her mother’s guns. PL 004238.
- Said that a story is going to make him murder suicide some people. PL000279.
- Took pictures of a stranger on the sidewalk and commented about raping her. Proceeded to state: “[S]ometimes it’s nice to just follow girls for hours” [i.e., to stalk women]. PL002333.
- Said that he wants to kill himself because other people’s existence is an insult to his own existence. PL000994.
- Repeatedly stated that he wants to murder individuals and stated that “[s]ometimes you have to kill some people to prove a point.” PL000316; PL000811; PL001347; PL001657; PL001758; PL002453; PL002586.
- Asked Mr. Nicholas Montorio (“Montorio”) whether Montorio would kill himself (Montorio) or Montorio’s family first. PL002392.
- Announced that he has “rage in [him], if someone wants to bring it, [he’s] got it,” stated that he wanted to murder individuals with whom he got into a bar fight, and bragged that security had to escort him out the back door. PL002635.
- Stated that he was going to send anthrax to BDO’s leadership. PL003963.

Beyond these text messages, much of Plaintiff’s hostility and rage appears to be directed at Ms. Bernier,² specifically. For instance, Plaintiff in his own words:

- Expressed his intention to sue Ms. Bernier “just for fun” in the event that he was terminated. PL001759.³
- Insinuated that Ms. Bernier is mentally retarded. PL000501; PL001757; PL001900.
- Referred to Ms. Bernier as a “cunt.” PL001760.

² Inexplicably, Plaintiff often refers to Ms. Bernier as “Julie” in his text messages with his BDO colleague and another third party.

³ On March 12, 2021, fourteen (14) months prior to Plaintiff’s termination in May 2022, Plaintiff outlined his intent to bring a meritless lawsuit against Defendants, stating: “**I wanna fuck these people over . . . If I get fired, I will seriously sue [Ms. Bernier] just for fun** . . .” PL001759 (emphasis added). Similarly, on a separate occasion, Plaintiff texted a different BDO employee: “**I hope I get fired, so I can sue [BDO] . . . [Shayna: Why are you suing them] . . . Why the fuck not? . . . If I get fired, I’m suing them.**” PL004023.

Magistrate Judge Lehrburger
January 18, 2024
Page 3

- Stated that Ms. Bernier needed to be neutralized and pacified. PL001792; PL002200.
- Hoped that Ms. Bernier got cancer within the next ten years. PL001829.
- Insinuated that someone should poison Ms. Bernier. PL001759.
- Repeatedly questioned when Ms. Bernier will die and told Montorio that Montorio would succeed Ms. Bernier upon her death. PL000275; PL002378; PL002522.
- Sent a picture of a rap artist (Tupac Shakur) pointing a gun at the camera and stated that it was “[d]edicated to Janet [Bernier].” PL004239.
- Stated that he does not view Ms. Bernier as a person. PL002668.
- Stated that he was “so wet right now” and contemplated sending an “eggplant” to Ms. Bernier.⁴ PL002269.
- Stated that Ms. Bernier should sit on his lap. PL002598.

Accordingly, Defendants are highly and legitimately concerned about their safety and the safety of their counsel in the present litigation. Defendants intend to depose Plaintiff in person and a representative of BDO and/or Ms. Bernier or Mr. Dymant may also attend the deposition, as is their right to do as parties to the litigation. *See, e.g., Tedesco v. Mishkin*, 629 F. Supp. 1474, 1481 (S.D.N.Y. 1986) (as a party to the action, defendant had an “absolute right” to attend deposition). However, Defendants feel that added safety protocols only available at the Courthouse, including metal detector screening and security guards, are necessary to safely conduct Plaintiff’s deposition in person.

Furthermore, while Defendants recognize that Plaintiff has a right to attend the other depositions in this matter if he wishes to do so, Defendants request that Plaintiff be restricted to attending these depositions virtually for these same safety-related reasons.

II. Conclusion

Workplace shootings and incidents of workplace-related violence are unfortunately all too common in the modern era. For the reasons discussed herein, Defendants respectfully request that the Court issue an Order permitting Defendants to depose Plaintiff at the Courthouse and barring Plaintiff from in-person attendance at the other depositions in this matter.

⁴ The eggplant emoji is commonly used to represent a penis.

Magistrate Judge Lehrburger
January 18, 2024
Page 4

Respectfully,

A handwritten signature in cursive script, reading "Lindsay F. Ditlow".

Lindsay F. Ditlow

cc: All counsel (via ECF)